

ENERGY MARKET INVESTIGATION

DRAFT ORDER – FIRST CONSULTATION

The Energy Market Investigation (Gas Settlement) Order 2016

Background

1. On 26 June 2014 the Gas and Electricity Markets Authority in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (the Act) (as provided for by section 36A of the Gas Act 1986 (GA86) and section 43 of the Electricity Act 1989 (EA89)), made an ordinary reference to the Chair of the Competition and Markets Authority (CMA) for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for an investigation into the supply and acquisition of energy in Great Britain.¹
2. The CMA investigated the matters referred to it pursuant to sections 131 and 133 of the Act and concluded (a) in accordance with section 134(1) of the Act that there are features of the markets for the supply and acquisition of energy in Great Britain which, either alone or in combination, prevent, restrict or distort competition; and (b) in accordance with section 134(2) of the Act, that there are adverse effects on competition (AECs). The CMA published its findings in a report under section 136 of the Act entitled *Energy market investigation: Final report* published on 24 June 2016 (the Report).
3. In the Report, the CMA found, amongst other things, that the current system of gas settlement is a feature of the markets for domestic and SME retail gas supply in Great Britain that gives rise to an AEC through the inefficient allocation of costs to parties and the scope it creates for gaming, which reduces the efficiency and, therefore, the competitiveness of domestic and microbusiness retail gas supply (the Gas settlement AEC).
4. The CMA considered, in accordance with section 134(4) of the Act, (a) whether action should be taken by it for the purpose of remedying, mitigating or preventing the AECs or any detrimental effect on consumers; (b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the AECs or any detrimental

¹ [Energy market investigation terms of reference.](#)

effect on consumers; and (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

5. The CMA decided on a package of remedies to be implemented in order to remedy, mitigate or prevent the Gas Settlement AEC, set out in paragraph 20.27 of the Report.

The Order

Reference and power

The CMA makes this Order in performance of its duty under section 138 of the Act for the purpose of remedying, mitigating or preventing the adverse effects on competition and any detrimental effects on consumers so far as they have resulted, or may be expected to result, from the adverse effects on competition as identified in the report of the CMA entitled *Energy market investigation: Final report* and published on 24 June 2016. The CMA makes this Order in exercise of the powers conferred by sections 86(1) to (5) and 87 (each applicable by virtue of section 164), 161(1), (3) and (4), paragraphs 10, 17 to 19, 21 and 22 of Schedule 8 to the Act. In accordance with section 27 of the Gas Act 1986, the CMA introduces amendments to Gas Supply Licence Condition 21B, Gas Shipper Licence Condition 11 and Gas Transporter Licence Condition 5 for the purpose of giving effect to the provisions of this Order, having had regard to GEMA's relevant statutory functions pursuant to section 168 of the Act.

Part 1

1. General – title, commencement and scope

- 1.1 This Order may be cited as 'The Energy Market Investigation (Gas Settlement) Order 2016'.
- 1.2 This Order shall come into force on [day after the order] December 2016 except Articles 3 and 4, which shall come into force on [1 April 2017].
- 1.3 This Order applies to supply of gas in Great Britain.
- 1.4 This Order shall continue to be in force until such time as it is varied or revoked under the Act. The variation or revocation of this Order shall not affect the validity or enforceability of any rights or obligations that arose prior to such variation or revocation.

2. Interpretation

- 2.1 In this Order:

Act means the Enterprise Act 2002.

CMA means the Competition and Markets Authority.

Customer has the meaning given to it in the Gas Supply Licence.

Daily Read Equipment	has the meaning given to it by the Transportation Principal Document Section M of the UNC.
Daily Read Supply Meter	means a Supply Meter where any Daily Read Equipment is connected to the Supply Meter Installation and operational in accordance with the Transportation Principal Document Section M of the UNC.
Gas Shipper Licence	means a gas supply licence granted or treated as granted under section 7A(2) of the Gas Act 1986.
Gas Supply Licence	means a gas supply licence granted or treated as granted under section 7A(1) of the Gas Act 1986.
Gas Transporter Licence	means a gas supply licence granted or treated as granted under section 7A(2) of the Gas Act 1986.
GEMA	means the Gas and Electricity Markets Authority established under section 1 of the Utilities Act 2000.
Meter Reading	has the meaning given to it in the Transportation Principal Document Section M of the UNC.
Non-Daily Read Supply Meter	means a Supply Meter where which is not a Daily Read Supply Meter.
Retail Gas Supplier	means any person authorised to supply gas by virtue of a Gas Supply Licence.
Relevant Gas Transporter	has the meaning given to it in the Gas Supply Licence.
Supply Meter	has the meaning given to it by the Transportation Principal Document Section M of the UNC.
Supply Meter Installation	has the meaning given to it by the Transportation Principal Document Section M of the UNC.
Uniform Network Code or UNC	means the document of that title required to be prepared pursuant to Standard Special Condition A11 (Network Code and Uniform Network Code) of licences granted under section 7 of the Gas Act 1986 (as from time to time modified pursuant to that condition), and that comprises the Transportation Principal Document.
Valid Meter Reading	means a Meter Reading obtained from a Non-Daily Read Supply Meter where the conditions set out in the Transportation Principal Document Section M of the UNC are satisfied.

- 2.2 In this Order any reference to:
- (a) **'month'** means calendar month;
 - (b) a **'person'** includes any individual, firm, partnership, body corporate or association;
 - (c) **'written'** or **'in writing'** includes the transmission of information or the conclusion of a process made on, by, or through the internet or by a postal service; and
 - (d) a government department or non-departmental public body or organisation or person or place or thing includes a reference to its successor in title.
- 2.3 The headings used in this Order are for convenience and have no legal effect.
- 2.4 References to any statute, statutory provisions, licence conditions or industry code shall be construed as references to that statute, statutory provision, licence conditions or industry code as amended, re-enacted or modified, whether by statute or otherwise.
- 2.5 The Interpretation Act 1978 apply to this Order except where words and expressions are expressly defined in this Order.

Part 2

Submission of Valid Meter Readings

- 3. Supply Meters able to remotely transmit Valid Meter Readings**
- 3.1 For the purposes of Articles 3 and 4, Supply Meters able to remotely transmit Valid Meter Readings are Non-Daily Read Supply Meters that
- (a) provide Valid Meter Readings for multiple time periods and are able to provide such Valid Meter Readings for periods of less than one month; and
 - (b) are able to provide the Retail Gas Suppliers with remote access to such Valid Meter Readings.
- 3.2 A Supply Meter is not able to remotely transmit Valid Meter Readings if it is not possible to obtain a Valid Meter Reading from that Supply Meter despite the Retail Gas Supplier taking all reasonable steps to do so.

- 3.3 With respect to any Supply Meters able to remotely transmit Valid Meter Readings referred to in Article 3.1, Retail Gas Suppliers must
- (a) obtain a Valid Meter Reading on a daily basis;
 - (b) submit at least once per month to the Relevant Gas Transporter all Valid Meter Readings obtained since the previous submission in accordance with the Transportation Principal Document Section M of the UNC.
- 3.4 Article 3 shall cease to have effect if the CMA confirms by way of a direction that an implemented modification proposal to the Uniform Network Code satisfies the aim of the remedy identified in paragraph 20.27(c) of its report entitled *Energy market investigation: Final report*.

4. Supply Meters that are not able to remotely transmit Valid Meter Readings

- 4.1 With respect to any Non-Daily Read Supply Meter which is not able to remotely transmit as per Article 3.1, Retail Gas Suppliers must provide to the Relevant Gas Transporter a Valid Meter Reading in accordance with the Transportation Principal Document Section M of the UNC when obtaining any Valid Meter Reading and at least once every year.

Part 3

Amendments to certain licence conditions

5. Amendments to the Gas Supply Licence, Gas Shipper Licence and Gas Transporter Licence

- 5.1 Schedule 1 shall have effect on [1 April 2017].
- 5.2 Schedule 2 shall have effect on [1 April 2017].
- 5.3 Schedule 3 shall have effect on [1 April 2017].

Part 5

Monitoring and compliance

6. Directions by the CMA as to compliance

- 6.1 The CMA may give directions falling within Article 6.2 to:
- (a) a person specified in the directions; or

(b) a holder for the time being of an office so specified in any body of persons whether incorporated or unincorporated.

6.2 Directions fall within this Article 6 if they are directions:

(a) to take such actions as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, this Order; or

(b) to do, or refrain from doing, anything so specified or described which the person might be required by this Order to do or refrain from doing.

6.3 In Article 6.2 above, 'actions' includes steps to introduce and maintain arrangements to ensure that any director, employee or agent of a Gas Supplier carries out, or secures compliance with, this Order.

6.4 The CMA may vary or revoke any directions so given.

7. Supply of information

7.1 Any person to whom this Order applies is required to provide any information and documents required by the CMA for the purposes of enabling the CMA to monitor the carrying out of this Order or any provisions of this Order and/or to review the effectiveness of the operation of this Order, or any provision of this Order.

7.2 Any person to whom this Order applies may be required by the CMA to keep and produce those records specified in writing by the CMA that relate to the operation of any provisions of this Order.

7.3 Any person to whom this Order applies and whom the CMA believes to have information which may be relevant to the monitoring or the review of the operation of any provisions of this Order may be required by the CMA to attend and provide such information in person.

7.4 Subject always to Part 9 of the Act, the CMA may publish any information or documents that it has received in connection with the monitoring or the review of this Order or any provisions of this Order for the purpose of assisting the CMA in the discharge of its functions under or in connection with this Order.

Schedule 1 – Amendment to the Gas Supply Licence

1. Condition 21B of the Gas Supply Licence shall be amended as follows.
2. For paragraph 21B.4 there shall be substituted–
 - ‘21B.4 The licensee must take all reasonable steps to obtain a meter reading (including any meter reading transmitted electronically from a meter to the licensee or provided by the Customer and accepted by the licensee)
 - (a) on a daily basis for each of its Customers with a Supply Meter able to remotely transmit meter readings; and
 - (b) at least once every year for each of its Customers.
3. After paragraph 21B.4, insert
 - ‘21B.4A For each of its Customers with a Supply Meter able to remotely transmit meter readings, the licensee must provide daily or with such frequency as provided for under the Uniform Network Code to the Relevant Gas Transporter all meter readings obtained pursuant to paragraph 21B.4(b) that satisfy the conditions set out in the Transportation Principal Document Section M of the Uniform Network Code.
 - 21B.4B Where the licensee is unable to obtain a remote read from a Supply Meter, despite taking all reasonable steps to do so, the licensee must provide to the Relevant Gas Transporter all meter readings obtained pursuant to paragraph 21B.4(a) that satisfy the conditions set out in the Transportation Principal Document Section M of the Uniform Network Code when obtaining any such meter reading and at least once every year.
 - 21B.4C For the purposes of paragraphs 21B.4A and 21B.4B, the licensee must provide meter readings to the Relevant Gas Transporter in accordance with the Transportation Principal Document Section M of the Uniform Network Code.
 - 21B.4D For the purposes of this condition, a Supply Meter is able to remotely transmit meter readings where it:
 - a) provides meter readings for multiple time periods and is able to provide such meter readings for periods of less than one month; and

b) is able to provide the licensee with remote access to such meter readings.'

4. After paragraph 21B.9, insert

'21B.10 For the purpose of this Condition, Supply Meter has the meaning given to it in the Transportation Principal Document Section M of the Uniform Network Code.

Schedule 2 – Amendment to the Gas Shipper Licence

1. The Gas Shipper Licence shall be amended as follows.
2. In Condition 11 of the Gas Shipper Licence,
 - (a) Delete at the end of paragraph 4(i): ‘and’
 - (b) Insert at the end of paragraph 4(j): ‘and’
 - (c) Insert after paragraph 4(j)
 - ‘(k) transmit to the relevant gas transporter any meter reading received from a relevant supplier.’

Schedule 3 – Amendment to the Gas Transporter Licence

1. The Gas Transporter Licence shall be amended as follows.
2. In Condition 5 of the Gas Transporter Licence, for paragraph 8(f) there shall be substituted–
 - ‘(f) as to any information given, or facts notified, to the licensee, during the relevant period, by a relevant shipper in pursuance of paragraph 3 or paragraph 4(k) of standard condition 11 (Supply and Return of, and Information etc Relating to, Gas Meters) of the standard conditions of gas shippers’ licences as incorporated in that shipper’s licence; and...’